

State of Missouri  
Office of Secretary of State

Case No. AP-09-46

IN THE MATTER OF:

INVESTMENT PROFESSIONALS, INC.  
CRD #30184  
16414 San Pedro Avenue, Suite 150  
San Antonio, Texas 78232,

Respondent.

**CONSENT ORDER**

WHEREAS, Investment Professionals, Inc. ("Respondent") is a Missouri-registered broker-dealer with its home office at 16414 San Pedro Avenue, Suite 150, San Antonio, Texas 78232; and

The Enforcement Section of the Missouri Securities Division (the "Enforcement Section") conducted an investigation into Respondent's marketing and sale of auction rate securities to investors during the period July 15, 2006 through July 15, 2008; and

Respondent has advised the Enforcement Section of its agreement to resolve the investigation relating to its marketing and sale of auction rate securities to investors; and

Respondent elects to permanently waive any right to a hearing and appeal under Chapter 409 or Chapter 536, RSMo. (Cum. Supp. 2008), with respect to this Consent Order (the "Order");

Respondent agrees that Respondent is not the prevailing party in this action and Respondent elects to specifically forever release and hold harmless the Missouri Office of Secretary of State, Secretary of State, Commissioner of Securities and their respective representatives and agents from any and all liability and claims arising out of, pertaining to, or relating to this matter; and

Respondent agrees not to take any action or to make or permit to be made any public statement creating the impression that this Order is without a factual basis. Nothing in this paragraph affects Respondent's: (a) testimonial obligations; (b) right to take legal or factual positions in defense of litigation or in defense of other legal proceedings in which the Commissioner of Securities is not a party; or (c) right to make public statements that are factual;

NOW, THEREFORE, the Missouri Commissioner of Securities ("Commissioner") hereby enters this Order.

**I.**

**FINDINGS OF FACT**

1. Respondent admits the jurisdiction of the Commissioner, neither admits nor denies the Findings of Fact and Conclusions of Law contained in this Order, permanently waives any right to a hearing and appeal of this matter, holds the Missouri Office of Secretary of State and all its representative harmless, and consents to the entry of this Order by the Commissioner.
2. Auction rate securities are long-term debt or equity instruments that include auction preferred shares of closed-end funds, municipal auction rate bonds, and various asset-backed auction rate bonds (collectively referred to herein as "ARS"). While ARS are all long-term instruments, one significant feature of ARS (which historically provided the potential for short-term liquidity) is the interest/dividend reset through weekly or monthly Dutch auctions. If an auction is successful, investors are able to exit the ARS market on a short-term basis. If, however, auctions "fail," investors are required to hold all or some of their ARS until the next successful auction in order to liquidate their funds. Beginning in February 2008, the ARS market experienced widespread failed auctions.
3. Respondent, through its Missouri-registered securities agents ("Registered Agents"), sold ARS totaling approximately one million five hundred seventy-five thousand dollars (\$1,575,000.00) to two (2) Missouri residents.
4. In May, 2008, a sixty-one (61) year-old Marshall, Missouri resident ("MR") submitted a complaint to the Enforcement Section regarding MR's ARS purchases from Respondent.

### **Marketing and Sales of ARS**

5. Documents provided by Respondent in response to the Enforcement Section's inquiries indicate that Respondent and/or its Missouri-registered agents, among other things, referred to ARS as:
  - a. "money-market type instruments";
  - b. "short- term money market paper";
  - c. "liquid every seven (7) days;" and/or
  - d. a "MMKT fund."
6. Although marketed and sold to investors as liquid, money-market type investments, ARS are actually long-term instruments subject to a complex auction process that, upon failure, can lead to illiquidity of the ARS.

### **Misrepresentations of the Auction Market and ARS**

7. On April 10, 2008, less than two (2) months after the ARS market commenced failing *en masse*, MR and Respondent's Missouri-registered representative, Jim Ferguson ("Ferguson"), spoke to Josh Freeman ("Freeman"), head of Respondent's Fixed Income Division. MR was concerned about the illiquidity of the ARS MR held. During this conversation, Freeman stated, among other things, the following:
  - a. "... if you want ... money market type instruments ... getting 3 or 3-1/4 tax free as opposed to 1-1/4 to 1-1/2 in a traditional money market, these are still the best thing going. . . ;"

- b. "... as far as short term money market paper, these options are it . . . ;"
  - c. "... these really are the best things going and eventually, I will tell you guys, the liquidity situation in the entire industry, it's figured itself out . . . ;"
  - d. "... and just in the last sixty (60) days we've seen again . . . a lot more normalcy come back into . . . all the markets, so it's a situation that does work itself out. . . [I]t's a short-term problem and still . . . , comparatively speaking, to any other money market type investment or CD that's out there, you know, these investments are still the best thing going . . . ;" and
  - e. "... The entire market's seeing improvement so . . . it does appear that things are, are working themselves back into a more normal state."
8. Although the ARS market had experienced wide-spread auction failures since mid-February, 2008, Respondent continued to indicate to ARS holders that the illiquidity of their ARS was short-term and temporary.
9. On December 31, 2007, Freeman distributed a memo to all of Respondent's registered representatives titled, AUCTION RATE MUNICIPALS. The memo stated, in part, that Freeman wanted to:
- "... make [Respondent's registered representatives] aware of this product line. . . First, the product is not new, although it may be new to most of you. . . The idea behind the product is to satisfy the short-term investment needs of high net worth and corporate clients as a means to service their cash management needs. This usually leads to other investment business, as well as presents a unique alternative to CD's and money markets." [Emphasis added]
10. In its May 29, 2009, letter to the Enforcement Section, Respondent stated, among other things, that:
- a. Respondent "had no formal policies" regarding ARS; and
  - b. ARS were not a part of "our business mix until mid to late 2007."
11. In its May 29, 2009, letter to the Enforcement Section, Respondent stated that "[t]here wasn't any literature (other than the email/memo) sent to the [Registered Agents] regarding Auction Rate Investments."
12. Although ARS are complicated and complex products, Respondent did not provide its Registered Agents with the training and information necessary to adequately explain these products or the mechanics of the auction process to investors.
13. Respondent failed to provide reasonable supervision by, among other things:
- a. failing to provide adequate suitability guidelines to its Registered Agents regarding the sale of ARS to investors;
  - b. failing to provide pertinent information and comprehensive training to its Registered Agents concerning the complexity of the ARS product; and

- c. failing to provide pertinent information and comprehensive training to its Registered Agents regarding the mechanics of the auction process.

## II.

### CONCLUSIONS OF LAW

14. The Commissioner has jurisdiction over this matter pursuant to the Missouri Securities Act of 2003, Chapter 409, RSMo. (Cum. Supp. 2008).
15. The Commissioner finds Respondent engaged in marketing and sales practices with respect to ARS in violation of Section 409.4-412(d)(13), RSMo. (Cum. Supp. 2008), and failed to reasonably supervise its registered agents in violation of Section 409.4-412(d)(9), and that this conduct constitutes grounds to revoke Respondent's registration under Section 409.4-412(b), RSMo. (Cum. Supp. 2007).
16. The Commissioner finds this order and the following relief appropriate, in the public interest, and consistent with the purposes intended by the Missouri Securities Act of 2003.

## III.

### ORDER

On the basis of the Findings of Fact, Conclusions of Law, and Respondent's consent to the entry of this Order,

IT IS HEREBY ORDERED:

1. Respondent is hereby CENSURED.
2. Respondent will CEASE AND DESIST from violating the Missouri Securities Act of 2003 and will comply with the Missouri Securities Act of 2003.
3. Respondent shall provide liquidity, at par by December 10, 2009, to all Eligible Customers, as defined below, that purchased Eligible Auction Rate Securities from Respondent, as described below.
4. Eligible ARS. For purposes of this Order, "Eligible ARS" shall mean auction rate securities that were purchased from Respondent on or before February 12, 2008, and that have failed at auction at least once between August 7, 2008, and the date of this Order.
5. Eligible Customer. As used in this Consent, "Eligible Customer" shall mean customers who were Missouri residents, charities, and/or small business entities at the time of purchase or customers who purchased their/its ARS from a Missouri agent, as follows:
  - a. Natural persons who purchased ARS at Respondent on or before February 12, 2008, and held those securities on February 12, 2008; or
  - b. Charities, endowments, or foundations with Internal Revenue Code Section

501(c)(3) status that purchased ARS at Respondent on or before February 12, 2008, and held those securities on February 12, 2008; or

- c. Small Businesses that purchased ARS at Respondent on or before February 12, 2008, and held those securities on February 12, 2008. For purposes of this provision, "Small Businesses" shall mean customers not otherwise covered by paragraph 5(b) above that had \$10 million or less in assets in their accounts with Respondent net of margin loans (or if the customer custodied portions of its investments purchased from Respondent away from Respondent, then had \$10 million or less in assets custodied at Respondent net of margin loans plus those assets purchased from Respondent but custodied elsewhere), as determined by the customer's aggregate household position(s) as of July 31, 2008 (if the customer was not a customer of Respondent as of July 31, 2008, as of the date that the customer terminated its customer relationship with Respondent, except that any customer excluded because it had more than \$10 million in assets purchased from Respondent as of the termination date shall be included if such customer can reasonably show that it held \$10 million or less in assets in its accounts at broker-dealers or other financial institutions where it held investments as of July 31, 2008).
  - d. Notwithstanding any other provision, "Small Businesses" does not include: (i)
6. Notwithstanding any other provision, "Small Businesses" does not include: (i) broker-dealers, or (ii) banks acting as conduits for their customers; or (iii) customers that have represented that they had total assets of greater than \$50 million, or otherwise are determined to have had assets greater than \$50 million, as of July 31, 2008.
  7. Respondent will no longer offer or sell ARS in the State of Missouri or to Missouri residents.
  8. Respondent shall pay the sum of fifty thousand dollars (\$50,000), payable to the Investor Education and Protection Fund. This amount shall be sent to Missouri Securities Division at 600 West Main Street, Jefferson City, Missouri 65101 within forty-five (45) days of the effective date of this Consent Order.
  9. Respondent shall pay the sum of two thousand five hundred dollars (\$2,500) as the costs of the investigation. This amount shall be sent to Missouri Securities Division at 600 West Main Street, Jefferson City, Missouri 65101, within forty-five (45) days of the effective date of this consent order and be payable to the Secretary of State's Missouri Investor Education and Protection Fund as provided in Section 409.6-604(e), RSMo. (Cum. Supp. 2008).
  10. Within thirty (30) days of the date of this Order, Respondent shall mail a notice to any Missouri investors who purchased ARS from Respondent and that subsequently transferred ARS positions to a firm other than Respondent prior to the date of this Order, if the transfer of the ARS positions occurred on or after January 1, 2003. Such notice shall state the offer to purchase ARS if the ARS remain held by the Purchasers. Within thirty (30) days of the receipt of the ARS purchaser's acceptance of the offer Respondent will purchase at par the ARS from the ARS purchaser.
  11. In a claim for consequential damages brought against Respondent, Respondent shall

arbitrate, or offer to arbitrate the claim if there is no pre-dispute arbitration agreement, the claim pursuant to the following provisions:

- a. the arbitrations will be conducted by a public arbitrator (as defined by section 12100(u) of the NASD Code of Arbitration Procedures for Customer Disputes, eff. April 16, 2007), under the auspices of FINRA;
  - b. the above-referenced public arbitrator will be available for the exclusive purpose of arbitrating any ARS Purchasers consequential damages claim;
  - c. Respondent shall pay all applicable forum and filing fees;
  - d. any Purchaser of ARS who chooses to pursue such a claim shall bear the burden of proving that they suffered consequential damages and that such damages were caused by investors' inability to access funds consisting of investors' ARS purchases through Respondent;
  - e. Respondent shall be able to defend against such claims; provided, however, that Respondent shall not contest liability related to the sale of ARS and, provided further, that Respondent shall not be able to use as part of its defense an investor's decision not to borrow money from the Respondent Affiliates.
12. Until February 26, 2010, Respondent shall pay each purchaser of ARS from Respondent, within 30 days of receiving notice from the Purchaser that the purchaser sold the ARS below par between February 13, 2008 and the date of this Order, the difference between par and the price at which the purchaser sold the ARS.
13. If the payments are not made by Respondent or Respondent defaults in any of its obligations set forth in this Order, the Commissioner may vacate this Order, at his sole discretion, upon 10 days prior written notice to Respondent and without opportunity for administrative hearing or may refer this matter for enforcement as provided in Section 409.6-603 and 409-6-604, RSMo. (Cum. Supp. 2008).
14. In addition, Respondent agrees that it shall be deemed a default of an obligation of Respondent under this Order if Respondent does not take the actions set forth above.
15. Nothing herein shall preclude Missouri, its departments, agencies, boards, commissions, authorities, political subdivisions and corporations, other than the Enforcement Section and only to the extent set forth in paragraph 1 above, (collectively, "State Entities") and the officers, agents or employees of State Entities from asserting any claims, causes of action, or applications for compensatory, nominal and/or punitive damages, administrative, civil, criminal, or injunctive relief against Respondent in connection with the marketing and sale of auction rate securities at Respondent.
16. This Order shall not disqualify Respondent or any of its agents, affiliates or current or former employees from any business that they otherwise are qualified or licensed to perform under applicable state law, and this Order is not intended to form the basis for any disqualification.
17. Respondent shall pay its own costs and attorneys' fees with respect to this matter.

SO ORDERED:

**WITNESS MY HAND AND OFFICIAL SEAL OF MY OFFICE AT JEFFERSON  
CITY, MISSOURI THIS 2<sup>ND</sup> DAY OF DECEMBER, 2009**

ROBIN CARNAHAN  
SECRETARY OF STATE

(Signed/Sealed)  
MATTHEW D. KITZI  
COMMISSIONER OF SECURITIES

Consented to by:

\_\_\_\_\_  
Mary S. Hosmer  
Missouri Securities Division

Investment Professionals, Inc.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_